

James A. Bruen (State Bar No. 43880)
 Charles M. Sink (State Bar No. 078168)
 Carl E. Switzer (State Bar No. 211858)
 Arjun Agarwal (State Bar No. 233576)
 Farella Braun + Martel LLP
 235 Montgomery Street, 17th Floor
 San Francisco, CA 94104
 Telephone: (415) 954-4400
 Facsimile: (415) 954-4480
 E-mail: jbruen@fbm.com
 E-mail: csink@fbm.com
 E-mail: cswitzer@fbm.com
 E-mail: aagarwal@fbm.com

Attorneys for Defendant/Counterclaimant
 GE TRANSPORTATION SYSTEMS
 GLOBAL SIGNALING, LLC

John W. Crowley (State Bar No. 039041)
 Robert B. Stringer (State Bar No. 056148)
 Richard Rosenberg (State Bar No. 067336)
 Crowley, Stringer & Fenske LLP
 456 Montgomery Street, 17th Floor
 San Francisco, CA 94104-1250
 Telephone: (415) 989-1100
 Facsimile: (415) 421-6651
 E-mail: jcrowley@crowleysf.com

Attorneys for Plaintiff/Counterdefendant
 SAN FRANCISCO BAY AREA RAPID
 TRANSIT DISTRICT

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO BAY AREA RAPID
 TRANSIT DISTRICT,

Plaintiff,

vs.

GE TRANSPORTATION SYSTEMS
 GLOBAL SIGNALING, LLC,

Defendant.

AND RELATED COUNTERCLAIM

Case No. C 06-3749 JSW

**SUPPLEMENTAL JOINT CASE
 MANAGEMENT CONFERENCE
 STATEMENT**

Date: January 9, 2009
 Time: 1:30 p.m.
 Courtroom: 2

AND ORDER THEREON

Pursuant to Civil L.R. 16-10(d), the parties to the above-entitled action certify that they met and conferred prior to this Court's Further Case Management Conference in this action and jointly submit this Supplemental Joint Case Management Statement. The parties respectfully request the Court to issue a Supplemental Case Management Order consistent therewith.

I. BRIEF SUMMARY OF THE CASE¹

This litigation arises from a contract between the plaintiff and counterdefendant San Francisco Bay Area Rapid Transit District ("BART") and the defendant and counterclaimant GE Transportation Systems Global Signaling, LLC ("GETS") related to BART's Advanced Automatic Train Control ("AATC") project. AATC is a communications-based technology that controls the movement of trains via a network of computers and radios located on trains and along the train railway.

Central to the dispute between GETS and BART is the nature of the Contract itself:

BART contends, among other things, that it purchased from GETS (1) the design, development and implementation of an AATC enhancement integrated within BART's existing train control system and (2) the certification by GETS that the ultimate integrated system was safe and functional and that GETS failed to develop and deliver the purchased certified system.

GETS contends, among other things, that (1) the Contract, consisting of the original agreement as amended by numerous change orders, is a "build to specification" by which BART required Harmon Industries, Inc., GETS' predecessor in interest, to implement AATC to meet BART-specified, highly detailed "technical requirements"; (2) material deficiencies in BART's technical requirements prevented completion of an AATC system that would be compatible with BART's existing equipment and train control system; (3) BART improperly stopped all GETS work on the contract because it lacked the necessary funding to correct the acknowledged problems within its technical requirements and lacked the money to modify its existing train control system to be compatible with its AATC technical requirements and (4) BART has refused

¹ Please refer to the parties' February 15, 2007 Joint Case Management Conference Statement for a more detailed, though still abbreviated, description of this case, including further background on the development of AATC, factual events key to the parties' dispute and disputed legal and potential dispositive issues.

1 to reimburse GETS for extra work required by BART, to pay the outstanding contract balances,
2 or to compensate GETS for damages suffered..

3 **II. SUMMARY OF PROCEDURAL BACKGROUND**

4 Pleadings: BART filed the complaint on June 13, 2006 and, in response to GETS'
5 July 17, 2006 Motion to Dismiss, filed an Amended Complaint on September 1, 2006. Following
6 GETS' September 28, 2006 Motion to Dismiss BART's Amended Complaint, the parties
7 stipulated to the withdrawal of that motion and the filing of a Second Amended Complaint.
8 BART filed its Second Amended Complaint on December 18, 2006 and GETS filed its Answer
9 and Counterclaim on January 17, 2006. Following BART's February 15, 2007 Rule 12 challenge
10 to GETS' Answer and Counterclaim, GETS filed an Amended Answer and First Amended
11 Counterclaim on April 20, 2007. BART filed its Answer to the latter on June 13, 2007.

12 Case Management: The Court held the Initial Case Management Conference in this
13 matter on February 23, 2007, following which, the Court issued its February 27, 2007 Order
14 Scheduling Trial and Pretrial Matters. Per that Order, the Court set discovery and dispositive
15 motion deadlines based on an April 13, 2009 jury trial date. In addition, and pursuant to
16 agreement of the parties, the Court referred the matter to private ADR, to be conducted before
17 November 30, 2007, if possible. The Court further issued an amended Civil Minute Order on
18 February 26, 2007, pursuant to which it approved a stipulation by the parties to engage a special
19 master for discovery purposes.

20 **III. DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS**

21 Trial and Pretrial Deadlines: The Court's February 27, 2007 Order Scheduling Trial and
22 Pretrial Matters was vacated following this Court's Order granting the parties' Joint Motion for
23 Order Modifying Pretrial and Trial Schedule on March 26, 2008. Per the Court's March 26, 2008
24 Order, the original discovery and dispositive motion deadlines have been modified based upon a
25 new trial date of October 5, 2009.

26 Special Master: Pursuant to the parties' April 23, 2007 Stipulation For Order Appointing
27 Special Master, the Court entered its April 24, 2007 Order Appointing Special Master, which
28 appointed the Hon. William L. Bettinelli (Ret.) to hear and rule upon discovery disputes per the

1 terms of that Order. The parties have conferred with the Special Master concerning general
 2 discovery procedures in this matter. The Special Master has signed a Discovery Order that
 3 governs the parties' discovery and discovery disputes through trial.

4 Written Discovery: The parties have exchanged initial disclosures pursuant to
 5 Fed.R.Civ.P. 26 and each has served multiple requests for production of documents. The parties
 6 have exchanged their respective paper documents, collectively numbering approximately 830,000
 7 pages. The parties have jointly retained Kroll Ontrack, an electronic discovery consultant, to
 8 facilitate the recent exchange of approximately 3.5 million pages of electronically stored
 9 information.² Also, the parties have propounded a total of seven sets of key contention
 10 interrogatories. The parties also have employed requests for admissions to attempt to narrow
 11 some of the issues in these proceedings. The parties have filed responses to six of the seven sets
 12 of contention interrogatories. The parties regularly engage in "meet and confer" efforts regarding
 13 discovery issues and to date have only had to call on the Special Master for help in a couple of
 14 matters. Finally, the parties stipulated to the entry of a protective order, adapting the Court's
 15 standard order on this subject.

16 Pleadings: GETS agreed to stipulate to BART's request to amend its complaint, for the
 17 purpose of stating the grounds for its claim for rescission of Change Orders 097 and 086 with
 18 greater precision. Pursuant to the parties' stipulation and this Court's Order, BART filed its Third
 19 Amended Complaint on February 29, 2008. GETS filed its Answer to Third Amended Complaint
 20 and its Second Amended Counterclaim on June 16, 2008.

21 Oral Discovery: The parties are in their fourth month of depositions of fact witnesses and
 22 Rule 30 (b) (6) deponents. Over 30 additional depositions are being scheduled for percipient
 23 witnesses and a roughly equal number of categories of Rule 30 (b) (6) subjects have been noticed
 24 for deposition.

25
 26
 27
 28 ² Discovery is further facilitated in this matter by the Court's October 16, 2007 Order Regarding Inadvertent
 Production of Documents and Electronically Stored Information, issued pursuant to the parties' stipulation thereon.

1 ADR: Pursuant to the Modified Pretrial and Trial Schedule, the parties participated in a
 2 two-day mediation on November 10 and 11, 2008, with Randall W. Wulff of Wulff, Quinby &
 3 Sochynsky Dispute Resolution serving as mediator. The dispute was not resolved.

4 **IV. FURTHER CASE MANAGEMENT**

5 Next Case Management Conference: The parties propose that a further case management
 6 conference be held in mid-April 2009 on a date convenient to the Court's schedule, to insure that
 7 the parties are keeping abreast of their planned pre-trial schedule.

8 Amendment of Pre-Trial Dates: As part of their discovery plan, the parties have
 9 exchanged millions of pages of documents/ESI , have subpoenaed thousands of additional records
 10 from several third parties, served lengthy contention interrogatories and prepared hundreds of
 11 pages of answers to those interrogatories. They also have deposed fact and Rule 30 (b) (6)
 12 witnesses, in the Bay Area, in Kansas City, and in Washington, D.C. Based upon the information
 13 developed through those contention interrogatory responses and the depositions completed to
 14 date, the parties have exchanged names of over 30 fact witnesses and approximately as many
 15 Rule 30 (b) (6) categories for further deposition testimony. After conferring on the need for
 16 additional time to undertake the currently planned additional discovery, the parties have agreed to
 17 the following changes to the existing pre-trial dates, subject to the Court's approval. These
 18 adjustments were discussed with the Special Master, who has approved them. Accordingly, the
 19 parties request that the Court modify or supplement its Pre-trial Conference Order of March 26,
 20 2008 to provide the following dates, which will not postpone the October 8, 2009 trial:

21 Completion of Fact Discovery: April 14, 2009

22 Last Day to Disclose Experts: April 30, 2009

23 Last Day to Disclose Rebuttal Experts: June 15, 2009

24 The parties have stipulated to request the Court to set a last date to file dispositive motions, with
 25 30 days to respond, so that the hearing will occur no later than July 6, 2009. Judge Bettinelli has
 26 deferred to the Court on this request since it directly affects the Court's calendar.

1 DATED: December __, 2008

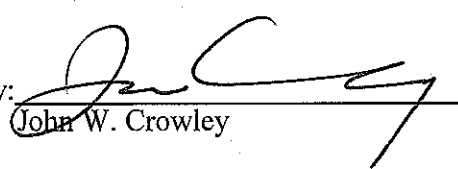
FARELLA BRAUN + MARTEL, LLP

2
3 By: /s/
Charles Sink

4
5 Attorneys for Defendant
GE TRANSPORTATION SYSTEMS
6 GLOBAL SIGNALLING, LLC

7 DATED: December 31, 2008

CROWLEY, STRINGER & FENSKE LLP

8
9 By: 
John W. Crowley

10 Attorneys for Plaintiff
11 SAN FRANCISCO BAY AREA RAPID
12 TRANSIT DISTRICT

13
14 **PROPOSED ORDER**

15 IT IS HEREBY ORDERED that a further case management conference be held on
16 July 17, 2009, 2009, at 9:00 a.m. in this Court. The Case Management Conference set
for Janury 9, 2009 is VACATED.

17 IT IS FURTHER ORDERED that the following pre-trial dates are established:

18 Completion of Fact Discovery: April 14, 2009

19 Last Day to Disclose Experts: April 30, 2009

20 Last Day to Disclose Rebuttal Experts: June 15, 2009

21 Last Day to File Dispositive Motions: June 12, 2009

22 Last Day to File Responses to Dispositive Motions: June 26, 2009

23 Last Day for Dispositive Motions: July 6, 2009 Reply due July 3, 2009

24 July 17, 2009 at 9:00 a.m. for hearing and
further Case Management Conference

25 DATED: January 6, 2009

26 
Hon. Jeffrey S. White
United States District Court Judge